



**U.S. ARMY CORPS OF ENGINEERS
REGULATORY PROGRAM
APPROVED JURISDICTIONAL DETERMINATION FORM (INTERIM)
NAVIGABLE WATERS PROTECTION RULE**

I. ADMINISTRATIVE INFORMATION

Completion Date of Approved Jurisdictional Determination (AJD): 4/7/2021

ORM Number: NWP-2021-112

Associated JDs: N/A

Review Area Location¹: State/Territory: Oregon City: Powell Butte County/Parish/Borough: Crook

Center Coordinates of Review Area: Latitude 44.186973° Longitude -120.936672°

II. FINDINGS

A. Summary: Check all that apply. At least one box from the following list MUST be selected. Complete the corresponding sections/tables and summarize data sources.

- The review area is comprised entirely of dry land (i.e., there are no waters or water features, including wetlands, of any kind in the entire review area). Rationale: N/A
- There are “navigable waters of the United States” within Rivers and Harbors Act jurisdiction within the review area (complete table in Section II.B).
- There are “waters of the United States” within Clean Water Act jurisdiction within the review area (complete appropriate tables in Section II.C).
- There are waters or water features excluded from Clean Water Act jurisdiction within the review area (complete table in Section II.D).

B. Rivers and Harbors Act of 1899 Section 10 (§ 10)²

§ 10 Name	§ 10 Size	§ 10 Criteria	Rationale for § 10 Determination
N/A.	N/A.	N/A.	N/A.

C. Clean Water Act Section 404

Territorial Seas and Traditional Navigable Waters ((a)(1) waters): ³			
(a)(1) Name	(a)(1) Size	(a)(1) Criteria	Rationale for (a)(1) Determination
N/A.	N/A.	N/A.	N/A.

Tributaries ((a)(2) waters):			
(a)(2) Name	(a)(2) Size	(a)(2) Criteria	Rationale for (a)(2) Determination
Stream A	N/A.	N/A.	N/A.

Lakes and ponds, and impoundments of jurisdictional waters ((a)(3) waters):			
(a)(3) Name	(a)(3) Size	(a)(3) Criteria	Rationale for (a)(3) Determination
N/A.	N/A.	N/A.	N/A.

Adjacent wetlands ((a)(4) waters):			
(a)(4) Name	(a)(4) Size	(a)(4) Criteria	Rationale for (a)(4) Determination
N/A.	N/A.	N/A.	N/A.

¹ Map(s)/figure(s) are attached to the AJD provided to the requestor.

² If the navigable water is not subject to the ebb and flow of the tide or included on the District’s list of Rivers and Harbors Act Section 10 navigable waters list, do NOT use this document to make the determination. The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Rivers and Harbors Act Section 10 navigability determination.

³ A stand-alone TNW determination is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established. A stand-alone TNW determination should be completed following applicable guidance and should NOT be documented on the AJD Form.



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D. Excluded Waters or Features

Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
Stream A	0.42	acre(s)	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year.	<p>Stream A flows from west to east along the Review Area's northern boundary until it no longer exhibits an Ordinary High Water Mark (OHWM) in the northeast portion of the Review Area. Digital resources described in part III. A. all show a cessation of mapped streams east of the Review Area. There is no publicly available Lidar in this portion of Crook County.</p> <p>Under the Navigable Waters Protection Rule (NWPR) the term tributary means a river, stream, or similar naturally occurring surface water channel that contributes surface water flow in a typical year to a water identified in paragraph 33 CFR 328.3(a)(1) either directly or through one or more waters identified in paragraphs (a)(2), (3), or (4). A tributary must be perennial or intermittent in a typical year.</p> <p>Based on a review of topographic maps and aerial images, the terrain becomes very flat from the eastern site boundary until the Swartz Canyon and Crooked River located approximately 2 miles east of the Review Area. There are no indications that Stream A would contribute surface water directly or indirectly to an (a)(1) water in a typical year.</p>
Stream B	0.66	acre(s)	(b)(1) Surface water channel that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year.	<p>Stream B originates in the northwest corner of the Review Area and flows to the east until it no longer exhibits an OHWM in the northeastern portion of the Review Area.</p> <p>Based on a review of topographic maps and aerial images, the terrain becomes very flat from the eastern site boundary until the Swartz Canyon and Crooked River located approximately 2 miles east of the Review Area. There are no indications that Stream B would contribute surface water directly or indirectly to an (a)(1) water in a typical year.</p>
Stream C	0.02	acre(s)	(b)(1) Surface water channel	Stream C is located in the southwest portion of the Review Area and flows from west to east

⁴ Some excluded waters, such as (b)(2) and (b)(4), may not be specifically identified on the AJD form unless a requestor specifically asks a Corps district to do so. Corps districts may, in case-by-case instances, choose to identify some or all of these waters within the review area.

⁵ Because of the broad nature of the (b)(1) exclusion and in an effort to collect data on specific types of waters that would be covered by the (b)(1) exclusion, four sub-categories of (b)(1) exclusions were administratively created for the purposes of the AJD Form. These four sub-categories are not new exclusions, but are simply administrative distinctions and remain (b)(1) exclusions as defined by the NWPR.



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Excluded waters ((b)(1) – (b)(12)): ⁴				
Exclusion Name	Exclusion Size		Exclusion ⁵	Rationale for Exclusion Determination
			that does not contribute surface water flow directly or indirectly to an (a)(1) water in a typical year.	before continuing offsite. Similar to Streams A and B, Stream C appears to follow the track of an NWI mapped feature, before losing all topographic indications of flow approximately 1.6 miles west of Swartz Canyon and Crooked River. There are no indications that Stream C would contribute surface water directly or indirectly to an (a)(1) water in a typical year.
Ditch	0.01	acre(s)	(b)(5) Ditch that is not an (a)(1) or (a)(2) water, and those portions of a ditch constructed in an (a)(4) water that do not satisfy the conditions of (c)(1).	The Ditch located in the north-central portion of the Review Area was constructed in uplands and meets the (b)(5) exclusion.

III. SUPPORTING INFORMATION

A. Select/enter all resources that were used to aid in this determination and attach data/maps to this document and/or references/citations in the administrative record, as appropriate.

Information submitted by, or on behalf of, the applicant/consultant: [Wetland delineation entitled, “Wetland Determination Report for the Powell East Solar Farm LLC SW Millican Road, Powell Butte, Oregon” by PBS and dated 23 February 2021 and submitted to the Corps on 1 March 2021.](#)

This information is sufficient for purposes of this AJD.

Rationale: [N/A](#)

Data sheets prepared by the Corps: [N/A](#)

Photographs: [Aerial and Other: Aerial images dated 27 July 2018 and 26 May 2018 from Google Earth were retrieved by the USACE on 22 March 2021. An aerial image dated 28 November 2020 from Digital Globe was retrieved by the USACE on 22 March 2021. Ground level images were provided within the wetland delineation.](#)

Corps site visit(s) conducted on: [N/A](#)

Previous Jurisdictional Determinations (AJDs or PJDs): [N/A](#)

Antecedent Precipitation Tool: [provide detailed discussion in Section III.B.](#)

USDA NRCS Soil Survey: [N/A](#)

USFWS NWI maps: [United States Fish and Wildlife Service \(USFWS\) National Wetland Inventory \(NWI\) map information retrieved by the USACE from the Regulatory WebViewer on 22 March 2021.](#)

USGS topographic maps: [United States Geological Survey \(USGS\) topographic map dated 2020 retrieved by USACE staff on 22 March 2021 from <https://ngmdb.usgs.gov/topoview/viewer/#14/44.1789/-120.9248>.](#)

Other data sources used to aid in this determination:



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Data Source (select)	Name and/or date and other relevant information
USGS Sources	USGS National Hydrography Dataset (NHD) information retrieved by USACE staff on 22 March 2021 from the Corps' eGIS WebViewer. USGS Raindrop tool information retrieved by USACE on 22 March 2021 from https://streamstats.usgs.gov/ss/ .
USDA Sources	N/A.
NOAA Sources	N/A.
USACE Sources	N/A.
State/Local/Tribal Sources	N/A.
Other Sources	N/A.

B. Typical year assessment(s): On 22 March 2021, the Corps utilized the Antecedent Precipitation Tool (APT) to conduct a typical year analysis of the Review Area via a single point method for the dates the wetland delineation field data was collected and the dates of aerial photography. The APT is an automation tool that evaluates three climatological parameters at a given location to assist in documenting the various determinations required by policy for the execution of the Corps Regulatory Program. The APT analysis determines if the date-specific observation falls within the normal periodic range for the geographic area based on a rolling thirty-year period. A single point method using the latitude and longitude coordinates identified in Section (I) above was utilized because the single point method adequately represents the data sources available via the APT to conduct an appropriate analysis of climatic conditions onsite. The Corps ran a typical year analysis for the Review Area vicinity utilizing the Corps' "Antecedent Precipitation Tool (APT)" (<https://github.com/jDeters-USACE/Antecedent-Precipitation-Tool/releases/tag/v1.0.13>).

Specifically, the Corps' ran an APT Analysis for the following dates:

26 May 2018 (Google Earth Image) - "normal conditions:" no observations of surface water.

27 July 2018 (Google Earth Image) - "drier than normal conditions:" no observations of surface water.

28 November 2020 (Digital Globe) - "normal conditions:" no observations of surface water.

25 March 2020 (Site Visit) – “drier than normal conditions:” no observations of surface water.

In conclusion, the Corps has determined from the use of the APT, wetland delineation data, aerial imagery, and other sources identified above that the streams do not provide a surface connection to an (a)(1-3) water.

C. Additional comments to support AJD: N/A.